

CMCMUA Wastewater Treatment Service Areas, USEPA Grant Conditions and Process for Mapping Revisions and Mapping Waivers

Background

The CMCMUA was created in 1972 by the Cape May County Board of Chosen Freeholders and the Authority’s appointed Board of Commissioners was entrusted with the task of designing, constructing and operating, efficient and cost-effective wastewater treatment facilities to replace numerous outdated municipal wastewater treatment plants. This action was taken in response to the passage of the Federal Water Pollution Control Act Amendment of 1972, also known as the Clean Water Act. This Act provided the statutory basis for regulating the discharge of pollutants from point sources to waters of the United States and specifically required the development and implementation of Pollution Discharge Elimination System programs and permits.

The prompt response of both the Cape May County Board of Chosen Freeholders and the Authority to this Federal mandate resulted in the CMCMUA being able to secure more than \$183 million in State and Federal grants to pay for approximately 55 percent of the capital costs for the regional wastewater treatment projects constructed by the Authority. Four wastewater service areas were created and treatment systems were constructed for the regions of Ocean City, Cape May, Seven Mile Beach/Middle and Wildwood/Lower. While the Wildwood/Lower Wastewater Treatment Facility serves a portion of Lower Township, most of Lower Township is primarily served with public sewer through the Lower Township Municipal Utilities Authority (“LTMUA”). The LTMUA also serves the southwest portion of Middle Township.

CMCMUA Regional Wastewater Treatment Service Areas

The CMCMUA owns and operates the Wastewater Treatment Facilities (WTF) in the regions of Ocean City, Cape May, Seven Mile Beach/Middle and Wildwood/Lower. The municipalities serviced by each region are listed below:

Name of CMCMUA Regional Wastewater Treatment Facility	Municipalities Serviced (By Regional Wastewater Service Area)
Ocean City Regional WTF	Ocean City
Seven Mile / Middle Regional WTF	Portions of Middle Township (north) Sea Isle City Avalon Stone Harbor Garden State Parkway (Dennis Twp.)
Wildwood / Lower Regional WTF	North Wildwood West Wildwood Wildwood Wildwood Crest Portions of Middle Township (southeast) Portions of Lower Township (Shawcrest and Willow Drive areas)
Cape May Regional WTF	Cape May City West Cape May Cape May Point

Each regional wastewater service area is depicted in detail on the Wastewater Service Area Maps that can be viewed on the Cape May County Planning Department’s webpage found on Cape May County’s website at: <http://www.capemaycountygov.net>. These maps all set forth the currently approved sewer service areas (SSAs) and include developed and undeveloped land areas, currently connected to sewers or not, that were incorporated in the most recent mapping approved by the New Jersey Department of Environmental Protection (NJDEP). Pre-existing grant conditions and requirements of the USEPA provide for restriction of sewer service to

environmentally sensitive areas. This mapping reflects the best available data but the accuracy of such data is not guaranteed. Potentially environmentally sensitive areas are identified on these maps for informational purposes only and are subject to site specific investigation to determine sewerability.

Development of a new Wastewater Management Plan is nearing completion and will include a revised set of Wastewater Service Area Maps that will depict current and future SSA's, subject to public review, Public Hearing and NJDEP approval. The new Wastewater Management Plan will include municipal plans with full build out projections for each municipality including projected wastewater flows which, once approved by the NJDEP, will be used as the basis to update the wastewater treatment capacity allocated to each municipality.

USEPA Grant Conditions

The CMCMUA Wastewater Treatment Facilities, except for the Ocean City Regional WTF, are subject to USEPA 201 Grant Restrictions which prohibit the connection of sewer to parcels of land within environmentally sensitive areas (ESA's). This grant condition restricts grantees from providing sewer connections for new development to be located on parcels containing ESAs for a period of 50 years from the date that the Finding of No Significant Impact/Environmental Assessment (FNSI/EA) was issued for the wastewater collection and/or treatment facility concerned. Specifically, the condition prohibits discharge of wastewater from any building, facility or other construction on any parcel of land within wetlands, critical wildlife habitat and/or the 100-year floodplain that was undeveloped as of the date of the FNSI/EA, unless approved in writing by USEPA Region 2. The USEPA 201 Grant Restrictions are set forth in the grant contract documents for each region and, as such, the restrictions vary somewhat from region to region. Generally, environmentally sensitive areas include, at a minimum, tidal and fresh water wetlands, critical wildlife habitat, and flood prone areas. ESA's can also include intermittent stream corridors, bogs, critical uplands, and beach and dune areas. Sewer connection on parcels that encroach on floodplains are dependent upon whether or not the community in which the project is located participates in the regular phase of Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program and the location of the project within the floodplain. Environmentally sensitive areas cannot be sewered unless a mapping "revision" or "waiver" is received from the USEPA prior to sewer connection of such parcels, as described in the section below entitled USEPA ESA Grant Condition Waiver Program and Mapping Revisions.

The USEPA 201 Grant Restrictions applicable to each CMCMUA regional WTF are detailed below:

Applicable USEPA 201 Grant Restrictions By CMCMUA Service Region
<p><u>OCEAN CITY REGIONAL WASTEWATER TREATMENT FACILITY</u></p> <p><u>USEPA GRANT TO THE CMCMUA (Project No. C340-387-01) - Part IIIb. – SPECIAL CONDITIONS:</u> No sewer restrictions in ESAs listed; no ESA maps prepared as they were not required by the approved facilities plan amendment. USEPA grant funds for the treatment plant, pumping stations and force mains were secured by the CMCMUA prior to the USEPA instituting the ESA condition. The ESA special condition first appeared in the Step III grant for the Ocean Outfall dated September 28, 1979.</p>

CAPE MAY REGIONAL WASTEWATER TREATMENT FACILITY

USEPA GRANT TO THE CMCMUA (Project No. C340-660-01) - Part IIIb. – SPECIAL CONDITIONS states in part:

1. “Sewer Restriction from Environmentally Sensitive Areas
 - a. The Grantee has submitted to EPA and the New Jersey Department of Environmental Protection an approved facilities plan amendment including maps that clearly delineate all specific vacant parcels of land within the facilities planning area that are partially or wholly within the 100 year floodplain as defined by the U.S. Department of Housing and Urban Development (HUD), or within critical wildlife habitat areas or environmentally sensitive areas as defined by the State of New Jersey, Office of Coastal Zone Management. These maps have also shown which parcels had been developed prior to the date of the Issuance Finding of No Significant Impact/Environmental Assessment (FNSI/EA), and include the delineation of the approved area for sewer service.
 - b. In order to implement Executive Order 11988, in connection with non-environmentally sensitive and non-wildlife habitat flood plain, and the Endangered Species Act, the Federal Wildlife Coordination Act, and the National Environmental Policy Act, and regulations thereunder in connection with environmentally sensitive and wildlife habitat areas, the grantee agrees that for a period of 50 years from the date of the FNSI/EA no sewer hook-up or other connections to the sewage treatment system included in the scope of this grant will be allowed or permitted so as to allow the discharge of wastewater from any building, facility, or other construction on any parcel of land within any critical wildlife or environmentally sensitive area, or within the 100 year floodplain, as those areas are delineated in the approved facility plan amendment, which land parcel as of the date of the FNSI/EA was undeveloped (i.e. upon which no building facility or other construction had been erected or placed) unless specifically approved in writing by the Regional Administrator. This restriction shall not apply to waterfront recreation facilities such as marinas and boating facilities which by their nature must be on waterfront locations. It is understood that the mapping and delineation of the service areas referred to in paragraph (a) hereof is subject to revision by the presentation of more accurate data and additional information (e.g., in the case of elevation, a licensed land surveyor’s or engineer’s certification) and that the facilities plan may be amended by the provision of such data and information to the Regional Administrator or his designee. It is understood that further amendments to the facilities plan may also be approved by the Regional Administrator or his designee in the event that a court of competent jurisdiction enters a final order requiring the provision of sewer service to areas presently restricted under the approved facilities plan and covered under this grant condition.”

As directed by the USEPA, ESA’s in the Cape May Region are defined to include critical wetlands/wildlife habitat, critical uplands/wildlife habitat, beach and dune complex, intermittent stream corridors, bogs and freshwater wetlands and flood-prone areas. Areas originally mapped as “Tract A” and “Tract B” in the City of Cape May were designated as unsewerable pursuant to the USEPA; however, on January 10, 1983 an order by the United States Court of Appeals for the Third District overturned this prohibition (Cape May Greene litigation) and the original “Tract A” and “Tract B” areas are now subject to the a Consent Order for Settlement as filed with the Superior Court of New Jersey, Cape May County on July 8, 2009, Docket No. CPM-L-1217-92. This settlement is reflected in the “Existing and Future Sewer Service Area Maps-2013 Draft”.

SEVEN MILE / MIDDLE REGIONAL WASTEWATER TREATMENT FACILITY

USEPA GRANT TO THE CMCMUA (Project No. C340-661-02) - Part IIIb. – SPECIAL CONDITIONS states in part:

3. "Sewer Restriction from Environmentally Sensitive Areas
 - a. The Grantee has submitted to EPA and the NJDEP an approved facilities plan amendment including maps that clearly delineate all specific vacant parcels of land within the facilities planning area that are partially or wholly within the 100 year floodplain as defined by the U.S. Department of Housing and Urban Development (HUD), or within critical wildlife habitat areas or environmentally sensitive areas as defined by the State of New Jersey, Office of Coastal Zone Management. These maps have also shown which parcels had been developed prior to the date of the Issuance Finding of No Significant Impact/Environmental Assessment (FNSI/EA), and include the delineation of the approved area for sewer service.
 - b. In order to implement Executive Order 11988, in connection with non-environmentally sensitive and non-wildlife habitat flood plain, and the Endangered Species Act, the Federal Wildlife Coordination Act, and the National Environmental Policy Act, and regulations thereunder in connection with environmentally sensitive and wildlife habitat areas, the grantee agrees that for a period of 50 years from the date of the FNSI/EA no sewer hook-up or other connections to the sewage treatment system included in the scope of this grant will be allowed or permitted so as to allow the discharge of wastewater from any building, facility, or other construction on any parcel of land within any critical wildlife or environmentally sensitive area, or within the 100 year floodplain, as those areas are delineated in the approved facility plan amendment, which land parcel as of the date of the FNSI/EA was undeveloped (i.e. upon which no building facility or other construction had been erected or placed) unless specifically allowed in the approved facilities plan amendment mapping or subsequently approved in writing by the Regional Administrator. This restriction shall not apply to waterfront recreation facilities such as marinas and boating facilities which by their nature must be on waterfront locations. It is understood that the mapping and delineation of the service areas referred to in paragraph (a) hereof is subject to revision by the presentation of more accurate data and additional information (e.g., in the case of elevation, a licensed land surveyor's or engineer's certification) and that the facilities plan may be amended by the provision of such data and information to the Regional Administrator or his designee. It is understood that further amendments to the facilities plan may also be approved by the Regional Administrator or his designee in the event that a court of competent jurisdiction enters a final order requiring the provision of sewer service to areas presently restricted under the approved facilities plan and covered under this grant condition."

WILDWOOD / LOWER REGIONAL WASTEWATER TREATMENT FACILITY

USEPA GRANT TO THE CMCMUA (Project No. C340-732-01) - Part IIIb. – SPECIAL CONDITIONS states in part:

4. "Sewer Restriction from Environmentally Sensitive Areas
 - a. The Grantee has submitted to EPA and the NJDEP an approved facilities plan amendment including maps that clearly delineate all specific vacant parcels of land within the facilities planning area that are partially or wholly within the 100 year floodplain as defined by the U.S. Department of Housing and Urban Development (HUD), or within critical wildlife habitat areas or environmentally sensitive areas as defined by the State of New Jersey, Office of Coastal Zone Management. These maps have also shown which parcels had been developed prior to the date of the Issuance Finding of No Significant Impact/Environmental Assessment (FNSI/EA), and include the delineation of the approved area for sewer service.
 - b. In order to implement Executive Order 11988, in connection with non-environmentally sensitive and non-wildlife habitat floodplain, and the Endangered Species Act, the Federal Wildlife Coordination Act, and the National Environmental Policy Act, and regulations thereunder in connection with environmentally sensitive and wildlife habitat areas, the grantee agrees that for a period of 50 years from the date of the FNSI/EA no sewer hook-up or other connections to the sewage treatment system included in the scope of this grant will be allowed or permitted so as to allow the discharge of wastewater from any building, facility, or other construction on any parcel of land within any critical wildlife habitat or environmentally sensitive area, or within the 100 year floodplain, as those areas are delineated in the approved facility plan amendment, which land parcel as of the date of the FNSI/EA was undeveloped (i.e. upon which no building facility or other construction had been erected or placed) unless specifically allowed in the approved facilities plan amendment mapping or subsequently approved in writing by the Regional Administrator. This restriction shall not apply to waterfront recreation facilities such as marinas and boating facilities which by their nature must be on waterfront locations. It is understood that the mapping and delineation of the service areas referred to in paragraph (a) hereof is subject to revision by the presentation of more accurate data and additional information (e.g., in the case of elevation, a licensed land surveyor's or engineer's certification) and that the facilities plan may be amended by the provision of such data and information to the Regional Administrator or his designee. It is understood that further amendments to the facilities plan may also be approved by the Regional Administrator or his designee in the event that a court of competent jurisdiction enters a final order requiring the provision of sewer service to areas presently restricted under the approved facilities plan and covered under this grant condition."

USEPA ESA Grant Condition Waiver Program and Mapping Revisions

All facility plans prepared for the ESA conditioned construction grant projects were required to provide detailed mapping of environmentally sensitive areas and existing land uses within the service area of the proposed wastewater facilities. This mapping delineated the extent of the undeveloped parcels containing ESAs at that time. However, the USEPA anticipated that the boundaries of the ESAs would change over the years; therefore, the ESA grant condition restriction only applies to the most current geographic extent of ESAs. As a result, mapping "revisions" are prepared and submitted by the CMCMUA for the review and approval of the USEPA whenever more accurate data or additional information is available which supersedes the original mapping and delineation of the service areas as contained in the approved facilities plan amendment.

The Wastewater Service Area Maps excluded all ESAs in accordance with the USEPA grant condition to the extent such features are known. For example, if a wetlands area was more accurately identified by an NJDEP approved Letter of Interpretation (LOI), that field verified data was utilized instead of the originally mapped wetlands line. Similarly, the knowledge of both local governmental and NJDEP professionals was utilized to verify other applicable ESA data by utilizing Pictometry and/or field study. In other areas, the NJDEP provided a revised wetlands layer in GIS to better depict the true extent of the wetlands areas. In some cases the revised ESA layer was shown as "Potentially Environmentally Sensitive Areas" in cases where a definitive determination could not be made. Such areas are subject to more detailed site investigation to determine the extent of the ESA, if any, prior to sewer connection.

The USEPA has also established a process for seeking an exemption to the ESA grant condition; this process is known as a "waiver". A "waiver" is an exemption to the ESA grant condition, which must be approved by the USEPA Regional Administrator or designee, allowing a proposed project on a parcel containing an ESA to be connected to the federally-funded sewage treatment works. More information regarding the USEPA ESA grant condition and the "waiver" process is delineated by the USEPA on its regional website at <http://www.epa.gov/region2/water/sewer.html>. The "[waiver](#)" request checklist for New Jersey can also be accessed from that same website.

Waiver requests for sewer connection on parcels that encroach on floodplains are dependent upon: (1) Whether or not the community in which the project is located participates in the regular phase of FEMA's National Flood Insurance Program, and; (2) The location of the project within the floodplain. Requests for general mapping waivers for floodplains are typically granted by the USEPA if the municipality is FEMA compliant. However, the USEPA does not typically grant a general mapping waiver for wetlands, critical wildlife habitat or other site specific ESAs. The USEPA's review criteria for wetlands and similar environmental mapping waivers, as detailed on the USEPA's website, are more stringent. At the time development is proposed, the USEPA requires the submission of detailed information on the specific project, parcel, and delineation of the extent of the ESA in order to make a determination regarding such waiver requests. Project developers and land owners are responsible for obtaining and providing all such required information on a lot-by-lot basis to the CMCMUA; the Authority then forwards this documentation to the EPA for review and consideration. If a waiver is approved, the USEPA Region 2 office will notify the CMCMUA in writing of the specific details of the waiver provided to the ESA grant condition and the affected parties will be notified accordingly.